IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 141 of 2001.

Judgement reserved on: 27.4.2007.

Date of decision: 28.5.2007.

Sudhir Mahajan ….. **Appellant.**

Vs.

United India Insurance Company Ltd. & anr. ….. **Respondents.**

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. Raman Sethi, Advocate.**

For the Respondents : **Mr. Anup Rattan, Advocate, for respondent No.1.**

Kuldip Singh, Judge.

This appeal has arisen out of award dated 1.7.2000, passed by the Motor Accident Claims Tribunal, Shimla, in MACC No. 1-S/2 of 1999, dismissing the claim petition, under Section 163-A of the Motor Vehicles Act (for short the Act), of the petitioner. For convenience, the parties are referred in the same manner, as in the impugned award.

2. The brief facts are that petitioner allegedly suffered injuries in car accident bearing No. HIS-2010 owned by respondent No.1 and insured with respondent No.2 and was being driven by petitioner at the time of accident. The respondent No. 1 is the wife of petitioner. The accident took place on 4.2.1998 at Jabli in Solan

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Whether the reporters of the local papers may be allowed to see the Judgment?

District, when petitioner was trying to save a child. In the accident petitioner suffered multiple injuries including fracture of left leg, which has resulted in permanent disability. The petitioner has claimed Rs. 5,00,000/-, as compensation.

3. The respondent No.1 was proceeded ex-parte. The respondent No.2 insurer filed the reply and has taken the plea that the petition is not maintainable. The further case of the respondent No. 2 is that the car was being driven in violation of the terms and conditions of the policy. The petitioner, who was driving the vehicle, did not possess a valid and effective driving licence at the time of accident. The accident has taken place due to rash and negligent driving of the petitioner. Therefore, he is not entitled to any compensation.

4. The learned Tribunal dismissed the petition, vide impugned award by holding that compensation for the death of or injury to a person, who himself is responsible for causing an accident cannot be claimed through the Tribunal under the Act constituted under Section 165 of the Act, hence petition is not maintainable. The petitioner has thus filed the appeal against the impugned award.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. The learned counsel for the petitioner has submitted that the petition being under Section 163-A of the Act, therefore, negligence of the petitioner who was driving the vehicle at the time of the accident is not relevant for determining compensation. It has been urged that Section 163-A of the Act, is a special provision,

which recognizes the principle of awarding compensation without proof of negligence. The general principle of law that the person who himself is negligent cannot claim compensation, is not applicable in a petition under Section 163-A of the Act. It has been submitted that scope of Section 163-A has not been properly appreciated by the Tribunal. No specific finding has been recorded by the Tribunal that petitioner in fact was negligent for causing the accident. The counsel appearing on behalf of respondent No. 1 has supported the impugned award and has submitted that Tribunal has rightly dismissed the claim petition.

7. The facts are not in dispute. The petitioner was driving the car at the time of the accident. The car was owned by respondent No.1 and insured by respondent No.2. In general law, owner and insurance company can be made liable if the accident takes place due to the negligence of the driver, wrong doer himself cannot claim compensation. In other words, if the driver is himself negligent, he cannot claim compensation against the owner and the insurance company. The Section 163-A of the Act, however does not require proof of negligence of driver before claiming compensation, Section 163-A, is reproduced herein below:-

> **"163-A. Special provisions as to payment of compensation on structured formula basis**.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor

vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.- For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

8. The Hon'ble Supreme Court in **Deepal Girishbhai Soni and others vs. United India Insurance Co. Ltd. [2004 ACJ 934]**, has held in para-66, as follows:-

"We may notice that section 167 of the Act provides that where death of, or bodily injury to, any person gives rise to claim of compensation under the Act and also under the Workmen's Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles Act contains different expressions as, for example, `under the provision of the Act', `provisions of this Act', `under any other provisions of this Act' or `any other law or otherwise'. In section 163-A, the expression `notwithstanding anything contained in this Act or in any other law for the time being in force' has been used, which goes to show that Parliament intended to insert a non obstante clause of wide nature which would mean that the provisions of section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an

exception to section 166 and the concept of social justice has been duly taken care of."

9. A Division Bench of this Court in **Kokla Devi** vs. **Chet Ram and another [2002 ACJ 650],** in paragraphs-33, 34 and 39, has held, as follows:-

"On the other hand, when section 163-A of the Act was incorporated, legislature was well aware that sections 147 and 149 were already there on the statute book. Both these sections provide defences available to an insurer and extent of its liability under the Act. Similarly, Chapter XII was already there when this provision was incorporated in the year 1994. As such the object and reasons assume significance in the context of consideration of section 163-A which starts with non obstante clause, we feel that it was intended to have an overriding effect on all the provisions of the existing law. Otherwise, there was nothing that prevented the legislature to have provided something in section 163-A itself enabling the insurance company to contest the claim where it had some defence to offer under the Act."

"In fact while lodging a claim under this provision of law even proof of negligence has also been done away with. Thus, the compensation is assessed on structured formula and becomes payable at once, subject of course to fulfillment of other conditions. Otherwise, if a claimant had to contest and fight out the insured as well as insurer (as urged by Mr. Sharma), he would file a regular claim petition under section 166 of Chapter XII of the Act and would get just compensation without any deductions or otherwise, as per section 168 thereof."

"Looking to the provisions of law and decisions referred to hereinabove we are of the view that the claim petition was

> maintainable on behalf of the claimant under Section 163-A of the Act and on fulfillment of the requirements as envisaged thereunder, she was entitled for payment of compensation. Decisions relied upon by the Tribunal below while rejecting the claim of the appellant, were of no consequence keeping in view the change in law as made by the Act as compared to the provisions of Motor Vehicles Act, 1939 and then by Central Act No. 54 of 1994. At the risk of repetition we may also observe that section 163-A (supra) starts, firstly, with non obstante clause and further makes owner of the vehicle or the authorized insurer liable to pay in case of death or permanent disability due to accident arising out of the use of motor vehicle as indicated in the Second Schedule. Another marked distinction in section 163-A and section 166 of the Act is that under the former legal heirs or the victim, as the case may be, is entitled for payment of compensation under section 163-A; whereas in the latter provision compensation payable in case of death (with which we are concerned in the present case) is claimable by the legal representatives of the deceased."

10. In the present case, no specific finding has been recorded by the Tribunal that the accident had taken place due to the negligence of the petitioner himself, but the petitioner has been non-suited by the Tribunal on the ground that compensation for the death of or injury to a person who himself is responsible for causing an accident cannot be claimed through the Motor Accident Claims Tribunal constituted under Section 165 of the Act. Assuming that petitioner himself was responsible for the accident, still the present petition under Section 163-A of the Act, is maintainable. The Section 163-A, in view of **Deepal Girishbhai Soni's case** (supra), covers cases where even negligence is on the part of the victim. The

decisions relied upon by the learned Tribunal for rejecting the claim of the petitioner are of no consequence in view of change in law. Therefore, the finding recorded by the learned Tribunal that petition under Section 163-A is not maintainable on the ground that a wrong doer cannot file petition under Section 163-A, is not sustainable. But the matter does not end here. The claimant in the present case has pleaded his income Rs. 12,000/- per month and accordingly he has claimed compensation amounting to Rs.5,00,000/-. In **Deepal Girishbhai Soni's case** (supra), the Hon'ble Supreme Court in para-67, has held as follows:-

> "We, therefore, are of the opinion that Kodala's case, 2001 ACJ 827 (SC), has correctly been decided. However, we do not agree with the findings in Kodala (supra), that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000 shall be treated as a cap. In our opinion, the proceeding under section 163-A being a social security provision, providing for distinct scheme, only those whose annual income is up to Rs. 40,000 can take the benefit thereof. All the other claims are required to be determined in terms of Chapter XII of the Act."

11. In the present case, the petitioner has pleaded that his income was Rs. 12000/- per month, i.e. Rs. 1,44,000/- per annum, but petition under Section 163-A is maintainable in those cases only where annual income is up to Rs. 40000. The Section 163-A is in Chapter XI of the Act. The other claims are required to be determined in terms of Chapter XII of the Act. Therefore, on the basis of pleaded case of the petitioner, petition under Section 163-A of the Act, is not

maintainable. Hence, the impugned award is upheld, though for different reasons.

12. No other point has been urged.

13. In view of above discussion, the appeal is dismissed with no orders as to costs.

May 28, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**